(2)

No. 09-705

Supreme Court, U.S.
FILED
JAN 19 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

FRANCISCO MOLINA JR.,

Petitioner,

v.

CHEVRON U.S.A., INC., S.W.A.T. ENERGY, INC., STEVE TANG, EDDY WU, and MARIAN TANG,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California, First Appellate District

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JEFFREY L. ADAMS (*Counsel of Record*)
LISA C. CHAGALA

For Respondents Chevron Products Company, a division of Chevron U.S.A., Inc., S.W.A.T. Energy, Inc., Steve Tang, Eddy Wu, and Marian Tang

LITTLER MENDELSON, P.C.
1255 Treat Blvd., Suite 600
Walnut Creek, California 94597
(925) 932-2468

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTER-STATEMENT OF QUESTIONS PRESENTED

Whether the California Court of Appeal applied well-settled law in affirming the California Superior Court's decision to sustain Respondents' demurrer to Petitioner's First Amended Complaint.

LIST OF PARTIES IN COURT BELOW

1. Francisco Molina Jr.
2. Chevron U.S.A., Inc.
3. S.W.A.T. Energy, Inc.
4. Steve Tang
5. Eddy Wu
6. Marian Tang

CORPORATE DISCLOSURE STATEMENT

Chevron U.S.A., Inc. is a wholly owned subsidiary of Chevron Corporation, which is a publicly traded corporation.

S.W.A.T. Energy, Inc. is a privately owned corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock.

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF QUESTIONS PRESENTED	i
LIST OF PARTIES IN COURT BELOW	ii
CORPORATE DISCLOSURE STATEMENT	ii
OPINIONS BELOW	1
STATUTES AND OTHER PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. Petitioner's Factual Allegations As Stated In First Amended Complaint	4
B. Superior Court Proceedings	5
1. Petitioner's Original Complaint And Respondents' Demurrer	5
2. Petitioner's First Amended Complaint And Respondents' Demurrer	6
C. California Court Of Appeal Proceedings	8
D. California Supreme Court Proceedings	9
E. Petitioner's Petition For Writ Of Certiorari	10
REASONS FOR DENYING THE PETITION	10
A. Summary Of Argument	10
B. The Criteria Of Supreme Court Rule 10 Are Not Satisfied	11
C. Petitioner's Arguments Are Insufficient Grounds For Review	12

TABLE OF CONTENTS – Continued

Page

1. Petitioner's "Fraud Upon The Court" Theory Is An Insufficient Ground For Review 12

2. Petitioner's Argument Of "Injustice Of Dismissal Of His Complaint" Is An Insufficient Ground For Review..... 15

D. The California Court Of Appeal's Decision To Affirm The Superior Court's Order Sustaining Respondents' Demurrer Was Correct 16

1. Standard Of Review 16

2. Petitioner Did Not Comply With The Superior Court's Order Sustaining The Demurrer To His Complaint 17

3. The First Amended Complaint Was Hopelessly Uncertain, Ambiguous And Unintelligible..... 18

4. Petitioner Failed To State A Cause Of Action For Wrongful Termination Against Any Of Respondents..... 20

5. Petitioner May Not Recover Allegedly Underpaid Wages From Marian Tang 24

6. The Second Cause Of Action For Fraud And Deceit Was Inadequately Pled 26

7. Petitioner's Demands For Punitive Damages Were Unsupported..... 27

CONCLUSION..... 29

TABLE OF AUTHORITIES

Page

CASES

Ankeny v. Lockheed Missiles & Space Co., 88 Cal.App.3d 531 (1979) 18

Blank v. Kirwan, 39 Cal.3d 311 (1985) 16, 26

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 13

Donabedian v. Mercury Ins. Co., 116 Cal.App.4th 968 (2004) 13

Ebaugh v. Rabkin, 22 Cal.App.3d 891 (1972) 28

Gil v. Bank of America, N.A., 138 Cal.App.4th 1371 (2006) 26

Green v. Ralee Engineering Co., 19 Cal.4th 66 (1998) 20

Holmes v. General Dynamics Corp., 17 Cal.App.4th 1418 (1993) 20

J.B. Aguerre, Inc. v. American Guar. and Liab. Ins. Co., 59 Cal.App.4th 6 (1997) 17

Jacobs v. Universal Development Corp., 53 Cal.App.4th 692 (1997) 22

Jones v. Gregory, 137 Cal.App.4th 798 (2006) 25

Khajavi v. Feather River Anesthesia Medical Group, 84 Cal.App.4th 32 (2000) 22

Phillips v. Gemini Moving Specialists, 63 Cal.App.4th 563 (1998) 22

Reno v. Baird, 18 Cal.4th 640 (1998) 22

Reynolds v. Bement, 36 Cal.4th 1075 (2005) 24, 25

TABLE OF AUTHORITIES – Continued

Page

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 13

Scifando v. City of Los Angeles, 31 Cal.4th 1074 (2003) 16

Weinbaum v. Goldfarb, Whitman & Cohen, 46 Cal.App.4th 1310 (1996) 22

STATUTES

29 U.S.C. §§151 et seq. 5

29 U.S.C. §185 4

29 U.S.C. §216(B) 5

42 U.S.C. §12101 5

California Civil Code §3294(a) 28

California Civil Code §3295(e) 27, 28

California Corporations Code §27101 ..... 20, 24

California Corporations Code §27200 ..... 20, 24

California Government Code §12940 5

California Government Code §70613(b) 3

California Labor Code §6310(a)(2) 21

RULES

California Code of Civil Procedure 422.30 2

California Code of Civil Procedure 425.10(a) 2, 18

California Code of Civil Procedure 430.10(e) 3

TABLE OF AUTHORITIES – Continued

Page

California Code of Civil Procedure 430.10(f) ..3, 13, 18

California Code of Civil Procedure 430.30 3

California Code of Civil Procedure 436(b).....28

Federal Rule of Civil Procedure 12(b)(6) 15

Federal Rule of Civil Procedure 12(e).....15

Federal Rule of Civil Procedure 12(f).....15

Federal Rule of Civil Procedure 60(b).....14

Federal Rule of Civil Procedure 60(b)(3) 14

Supreme Court Rule 10.....11, 12

OTHER AUTHORITIES

EUGENE GRESSMAN ET AL., SUPREME COURT PRACTICE p. 140 (9th Ed. 2008) 13

Preamble to Public Law 111-21.....14

OPINIONS BELOW

The California Superior Court's Order sustaining Respondents' Demurrer to Petitioner's Complaint is unreported and is included as Appendix A hereto.

The California Superior Court's Order sustaining Respondents' Demurrer to Petitioner's First Amended Complaint is unreported and is included as Appendix B hereto.

The Order of the California Court of Appeal denying Petitioner's Petition for Writ of Mandate/ Prohibition is included as Appendix C hereto.

The Order of the California Court of Appeal affirming the California Superior Court's Order sustaining Respondents' Demurrer to Petitioner's First Amended Complaint is unreported and is included as Exhibit D hereto.

The Order of the California Court of Appeal denying Petitioner's Petition for Writ of Mandate is unreported and is included as Appendix D to the petition.

The California Supreme Court's Order denying Petitioner's Petition for Review of the California Court of Appeal's denial of Petitioner's Petition for Writ of Mandate/Prohibition is unreported and is included as Appendix C to the petition.

The California Supreme Court's Order denying Petitioner's Petition for Review of the California Court of Appeal's Opinion affirming the Superior

Court's Order is unreported and is included as Appendix B to the petition.

The California Supreme Court's Order denying Petitioner's Petition for Review of the California Court of Appeal's denial of Petitioner's Writ of Mandate is unreported and is included as Appendix A to the petition.

STATUTES AND OTHER PROVISIONS INVOLVED

California Code of Civil Procedure §425.10(a) provides:

> (a) A complaint or cross-complaint shall contain both of the following:
>
> (1) A statement of the facts constituting the cause of action, in ordinary and concise language.
>
> (2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated.
>
> (b) Notwithstanding subdivision (a), where an action is brought to recover actual or punitive damages for personal injury or wrongful death, the amount demanded shall not be stated, but the complaint shall comply with Section 422.30 and, in a limited civil

> case, with subdivision (b) of Section 70613 of the Government Code.

California Code of Civil Procedure §430.10(e) provides:

> The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . .
>
> (e) The pleading does not state facts sufficient to constitute a cause of action.

California Code of Civil Procedure §430.10(f) provides:

> The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . .
>
> (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

STATEMENT OF THE CASE

Petitioner's Statement of the Case contains inaccuracies and immaterial allegations and omits critical undisputed facts. The following Statement of the Case accurately reflects the relevant portions of

the undisputed factual record, as well as the lower courts' decisions.

A. Petitioner's Factual Allegations As Stated In First Amended Complaint.

This is an employment law case where Petitioner filed suit against his former employer and other entities and individuals. Petitioner originally filed suit in the Superior Court of California, Contra Costa County. In his First Amended Complaint, Petitioner alleged: Petitioner was hired by S.W.A.T. Energy, Inc. ("S.W.A.T.") in or around September 2006 to perform services as a Civil Structural Engineer at Chevron's Richmond Refinery. Petitioner was asked to prepare or sign off on various plans, calculations or construction related to Chevron facilities. Petitioner refused to prepare, modify or approve any plans, calculations or construction that did not comply with applicable building codes, despite the requests of the Respondents that he do so. Petitioner was dismissed on or around February 5, 2007 after refusing to "cover up" an area that had been illegally graded and paved. Petitioner and Respondent S.W.A.T. agreed on an annual salary of $104,000, and Petitioner received $21,000 for his work in the last three calendar months of 2006 – approximately $5,000 less than he allegedly should have received.

Petitioner's First Amended Complaint set forth the following causes of action: (1) Breach of Labor Contract (29 U.S.C. §185); (2) Breach of Duty of Fair

Representation (29 U.S.C. §§151 et seq.); (3) Violation of the Americans With Disabilities Act (42 U.S.C. §12101, Cal. Gov't Code §12940); (4) Age Discrimination (29 U.S.C. §216(B), Cal. Gov't §12940); (5) Fraudulent Misrepresentation; (6) Defamation; (7) Malicious Prosecution; (8) Abuse of Process; and (9) Tortious Discharge in Violation of Public Policy.

B. Superior Court Proceedings.

1. Petitioner's Original Complaint And Respondents' Demurrer.

On approximately December 27, 2007, Petitioner filed his initial Complaint with the California Superior Court, Contra Costa County. On or about February 28, 2008, Respondents filed a demurrer to Petitioner's Complaint. On April 30, 2008, the Superior Court issued an order sustaining Respondents' special demurrer with leave to amend. The Court explained its ruling in part as follows:

> [T]he complaint is 'ambiguous,' in that it is difficult to tell which of the lengthy introductory allegations apply to each of the named defendants, and to each cause of action. . . . The complaint is also ambiguous as to whether plaintiff is attempting to state a fraud cause of action. . . . [T]he length of the recitation of background facts in the introductory allegations, the confusing wording of those allegations, the references to legal authorities such as Nolo Press publications and attorney general opinions . . . and the

> overall method of the complaint's organization, render the complaint 'unintelligible' within the meaning of the special demurrer statute.

Appendix A hereto. The Superior Court provided Petitioner approximately 15 days to file and serve an amended complaint. The Court's order advised Petitioner to seek the assistance of an attorney, and the order set forth specific, understandable requirements as to how to amend his complaint.[1]

2. Petitioner's First Amended Complaint And Respondents' Demurrer.

On May 13, 2008, Petitioner filed his First Amended Complaint. On or about June 12, 2008, Respondents filed a demurrer to Petitioner's First Amended Complaint. Petitioner did not file or serve an opposition to that demurrer and did not contest the Court's tentative ruling issued in favor of Respondents. On August 14, 2008, the Superior Court issued an order sustaining Respondents' demurrer without leave to amend. The Court explained in its order:

> Defendants' special demurrers are sustained without leave to amend, as to the entire

---

[1] Petitioner's argument that "This Civil Complaint . . had three Admissions Deemed Entered For Late Responses . . . " is misleading. Petition page 3. The court did *not* enter an order deeming admissions entered.

> complaint, and as to each cause of action within the complaint. . . . Despite an opportunity to amend, and despite the detailed explanation in the Court's previous ruling of the pleading defects that plaintiff needed to address, plaintiff's First Amended Complaint is impermissibly 'uncertain' in most of the same respects as the original complaint.
>
> Defendants' general demurrers are also sustained without leave to amend, as to the entire complaint, and as to each cause of action within the complaint. . . . Despite the confusing nature of the First Amended Complaint, the Court has made a reasonable effort to evaluate those allegations specifically referenced under the headings for individual causes of action. Based on this evaluation, the Court finds as follows: . . . the First Cause of Action does not state facts sufficient to constitute a cause of action for wrongful termination in violation of public policy . . . the Second Cause of Action does not state facts sufficient to constitute a cause of action for fraud . . . the Third Cause of action does not state facts sufficient to constitute a cause of action for conversion. . . . The action is hereby dismissed with prejudice. . . .

Appendix B hereto. On September 24, 2008, the Court entered judgment in favor of Respondents.

C. California Court Of Appeal Proceedings.

On September 9, 2008, Petitioner filed a petition for writ of mandate/prohibition with the California Court of Appeal. On September 11, 2008, that petition was denied. Appendix C hereto.

On August 28, 2008, Petitioner filed a Notice of Appeal with the California Court of Appeal. On June 29, 2009, the Court of Appeal issued an order affirming the Superior Court's order. The Court of Appeal held that the trial court could reasonably conclude that even if it gave Petitioner another additional opportunity to amend his complaint, there was no reasonable possibility that he would file an intelligible complaint. The Court of Appeal further explained:

> We agree with the trial court's determination that the first amended complaint is uncertain within the meaning of section 430.10, subdivision (f). As the court observed, the lengthy recitation of background evidentiary facts is rambling, confusing, drafted in incomplete sentences and thoughts and generally disorganized. Contained within the litany of unrelated facts are random and unexplained citations and quotations from various legal authorities. More importantly, it is difficult to determine with reasonable reliability what allegations are made against each defendant and what facts form the alleged basis of what cause of action. As defendants note, 'Since [Petitioner] verified the [first amended complaint], [defendants]

> would be required to admit or deny each and every allegation and verify their response which is impossible if [they] cannot understand the allegations.'. . . [T]he level of uncertainty is sufficient to reasonably prevent defendants from filing a responsive pleading.

Appendix D hereto (Ct. App. Opp., p. 4).

On July 29, 2009, Petitioner filed with the Court of Appeal a petition for writ of mandate. On July 30, 2009, the Court of Appeal denied that writ of mandate. Appendix D to the petition.

D. California Supreme Court Proceedings.

On September 17, 2008, Petitioner filed with the California Supreme Court requests for review of the Court of Appeal's denial of his petition for writ of mandate/prohibition. On October 22, 2008, the California Supreme Court denied his request for review. Appendix C to the petition.

On July 30, 2009, Petitioner filed with the California Supreme Court a petition for review of the Court of Appeal's opinion affirming the Superior Court's order sustaining Respondents' demurrer. The California Supreme Court denied Petitioner's request for review on September 9, 2009. Appendix B to the petition.

On August 5, 2009, Petitioner filed with the California Supreme Court a petition for review of the

denial of his second petition for writ of mandate. On September 9, 2009, the California Supreme Court denied Petitioner's requests for review. Appendix A to the petition.

E. Petitioner's Petition For Writ Of Certiorari.

Petitioner filed a petition for writ of certiorari in this Honorable Court, which was docketed on December 17, 2009. Petitioner seeks review of the California Court of Appeal's opinion affirming the Superior Court's order sustaining Respondents' demurrer, which the California Supreme Court declined to review.

REASONS FOR DENYING THE PETITION

A. Summary Of Argument.

The instant petition for writ of certiorari should be denied. Petitioner failed to identify, in accordance with Supreme Court Rule 10, either (1) an important federal question that the California Court of Appeal decided in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeal, or (2) an important federal question that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Moreover, the Court of Appeal's decision was correct. Petitioner seeks certiorari for no other reason than to have this Court review his First Amended

Complaint in search of a viable claim that both the California Superior Court and California Court of Appeal could not find. Such is insufficient grounds for review.

B. The Criteria Of Supreme Court Rule 10 Are Not Satisfied.

This Court has complete discretion in determining whether to grant a petition for writ of certiorari and will grant a petition only for compelling reasons. Sup. Ct. R. 10. Review of the California Court of Appeal's decision might be appropriate, for example, if the California Court of Appeal had decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeal. Review also might be appropriate if the California Court of Appeal had decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10.

Here, no such circumstances exist. No important federal question is at issue in this case. The petition relates to basic pleading standards under the California Code of Civil Procedure. Such is a question of state law, not federal law. Moreover, Petitioner identified no decision of a state court of last resort or United States court of appeal that conflicts with the California Court of Appeal's decision in this case.

If anything, Petitioner argues only "erroneous factual findings" or "the misapplication of a properly stated rule of law," which is rarely grounds for granting a petition for writ of certiorari. Sup. Ct. R. 10. Furthermore, because the California Superior Court's and California Court of Appeal's opinions in this case are unreported, they lack precedential value. Accordingly, the circumstances under which the Supreme Court will consider granting certiorari do not exist in this case.

C. Petitioner's Arguments Are Insufficient Grounds For Review.

Petitioner asserts as the basis for his petition, in summary, as (1) "fraud upon the court" and (2) "injustice of dismissal of his complaint." Petition at i-ii. Such are insufficient reasons for review. Sup. Ct. R. 10.

1. Petitioner's "Fraud Upon The Court" Theory Is An Insufficient Ground For Review.

Petitioner provides no support for the argument that an "UNSETTLED ISSUE of FRAUD UPON THE COURT" exists. Petition at i, 2, 6, 7. Petitioner does not provide citations, for example, of cases in which jurisdictions ruled differently on an issue of "fraud upon the court." Indeed, no such unsettled issue exists. The pleading standards in California courts have been firmly established by the California

Legislature and California Courts of Appeal. *See, e.g.*, Cal. Code Civ. Proc. §430.10(f); *Donabedian v. Mercury Ins. Co.*, 116 Cal.App.4th 968, 99 (2004) (a demurrer is a pleading used to test the legal sufficiency of other pleadings; i.e., it raises issues of law, not fact, regarding the form or content of the opposing party's pleading).

Petitioner's references to the Fourteenth Amendment to the U.S. Constitution are without explanation. Petition at 1, 2, 6, 7, 8, 9. Petitioner cites no authority for the proposition that sustaining a demurrer under the California Code of Civil Procedure is a violation of the Fourteenth Amendment. Moreover, this argument underscores that Petitioner is merely dissatisfied with how the Court of Appeal applied the California Code of Civil Procedure to his case.

Petitioner's reference to the *Rooker-Feldman* doctrine does not help him. Petition at i. The *Rooker-Feldman* doctrine refers to the principle that lower federal courts are barred from reviewing final state court decisions dealing with federal issues, and the U.S. Supreme Court has jurisdiction over such state court judgments. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *see also* EUGENE GRESSMAN ET AL., SUPREME COURT PRACTICE p. 140 (9th Ed. 2008). That doctrine addresses the issue of jurisdiction and does not require review of this case.

The "Fraud Recovery and Enforcement Act" has no connection to Petitioner's claims. Petition at 6. Such Act was intended "to improve enforcement of mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes." *See* Preamble to Public Law 111-121. That law does not support review of this case.

To the extent Petitioner attempts to argue that demurrers should not be permitted in California courts because demurrers are not permitted under the Federal Rules of Civil Procedure, such argument fails. *See, e.g.,* petition at 1 ("Federal Law (FRCP Rule 60(b) and Rule 60(b)(3) et cetera.) TRUMPS State Law (Demurrers)"); at 7 ("FUNDAMENTAL INEQUITY between Notice Pleadings (FRCP) and Code Pleading (DEMURRERS)"); at 8 ("INEQUITY IN LAW between Notice Pleadings of the Federal FRCP, and the Demurrers in California's Code Pleading"); at 9 ("California's Code Pleading DEMURRERS"). Petitioner cites no valid authority for the proposition that the Federal Rules of Civil Procedure, and not the California Code of Civil Procedure, apply in California state courts. Petitioner cites no valid authority for the proposition that California's code pleading standard, as opposed to the federal notice pleading standard, is improper. Moreover, the standard for a demurrer as stated in the California Code of Civil Procedure is similar to the standard for a motion to dismiss as stated in the Federal Rules of

Civil Procedure. *See* Fed. R. Civ. Proc. 12(b)(6) (a party may assert a defense of "failure to state a claim upon which relief can be granted"); *see also* Fed. R. Civ. Proc. 12(e) (motion for more definite statement); Fed. R. Civ. Proc. 12(f) (motion to strike). It is unlikely that a different outcome would have occurred if the Federal Rule of Civil Procedure or a notice pleading standard had been applied in this case.

2. Petitioner's Argument Of "Injustice Of Dismissal Of His Complaint" Is An Insufficient Ground For Review.

Petitioner is simply dissatisfied with how the California Superior Court and California Court of Appeal applied the well-settled, properly-stated law in his case. *See, e.g.,* petition at 6 (referring to alleged "NON FEASANCE of the California State Courts"); at 8 ("NON FEASANCE by some Courts"); at 7 ("GROSS INJUSTICE of Dismissal by DEMURRER"); at 9 ("NON FEASANCE by the California Courts").

Petitioner's argument that Respondents did not notice the Superior Court's order fails. Petition at vii. Petitioner cites no authority for the proposition that a defendant must notice an order, and indeed there is no such authority. To the extent Petitioner is attempting to contend that Respondents failed to notice the hearing on the demurrer to the First Amended Complaint, such argument fails because

notice was issued to Petitioner of the date, time, and location of the hearing.

Petitioner's argument that the Superior Court's order was issued two days after Petitioner's First Amended Complaint was filed also does not support review of this case. Petition at 9. This allegation is false, as the Court's Order was issued on April 30, 2008 and Petitioner filed his First Amended Complaint on May 13, 2008. Even if his factual allegation was true (it is not), the Superior Court provided Petitioner with opportunity to amend his pleading and specific written instructions on how to do so. Despite that opportunity, Petitioner did not amend his pleading in accordance with the Superior Court's Order. Accordingly, Petitioner failed to establish that review is appropriate.

D. The California Court Of Appeal's Decision To Affirm The Superior Court's Order Sustaining Respondents' Demurrer Was Correct.

1. Standard Of Review.

The abuse of discretion standard of review applies. Where a demurrer has been sustained without leave to amend, the appellate court must decide whether there is a reasonable possibility that the defect could be cured with an amendment. *Scifando v. City of Los Angeles,* 31 Cal.4th 1074, 1081 (2003); *Blank v. Kirwan,* 39 Cal.3d 311, 318 (1985). Here, the California Court of Appeal and California Superior

Court correctly decided that there was no reasonable possibility that the defects in Petitioner's pleading could be cured.

2. Petitioner Did Not Comply With The Superior Court's Order Sustaining The Demurrer To His Complaint.

Petitioner did not meet his "burden in the trial court . . . to show that the first amended complaint could be further amended to state a cause of action." *J.B. Aguerre, Inc. v. American Guar. and Liab. Ins. Co.*, 59 Cal.App.4th 6, 18 (1997). The Superior Court provided Petitioner opportunity to amend his initial complaint after it sustained Respondents' demurrers. The Superior Court provided specific instructions directed to Petitioner in the order to assist him. Appendix A hereto. However, Petitioner then filed his First Amended Complaint which did not comply with the Superior Court's instructions and did not state a comprehensible cause of action against Respondents. The Superior Court provided Petitioner ample opportunity to cure the defects of his complaint and state understandable and plausible causes of action, but Petitioner failed to do so.

Petitioner did not file any opposition to Respondents' demurrer to Petitioner's First Amended Complaint. Petitioner declined to both oppose and seek oral argument concerning the Superior Court's tentative ruling sustaining the demurrers and dismissing the case. Under such circumstances, the Superior

Court properly sustained the demurrer without leave to amend.

3. The First Amended Complaint Was Hopelessly Uncertain, Ambiguous And Unintelligible.

A complaint is supposed to contain a "statement of the facts constituting the cause of action, in ordinary and concise language." Cal. Code Civ. Proc. §425.10(a); *see also Ankeny v. Lockheed Missiles & Space Co.*, 88 Cal.App.3d 531, 537 (1979) (essential facts upon which determination of controversy depends must be stated "with clearness and precision so that nothing is left to surmise"); Cal. Code Civ. Proc. §430.10(f) (defendant may demur to pleading on grounds that it is uncertain, ambiguous and unintelligible).

The First Amended Complaint was so uncertain, ambiguous and unintelligible as to deprive Respondents of any meaningful opportunity to respond to or defend against them. Those paragraphs and others were permeated with poor grammar, syntax, sentence structure and punctuation, unexplained authorities and code references, convoluted, hyper-technical jargon and incomplete thoughts. Respondents offer the following as just one representative example:

> Plaintiff, later at about January 15, 2007, on working on the foundation for the metal pre-fabricated warehouse on Lay-down Area No.3, learned that the actual metal pre-fabricated

> warehouse that SWAT had (non-engineer) Gerard Gazard ordered, had a footprint of 90 ft. by 180 ft. which was nearly the size of Plaintiff's Lay-Down-Area No. 3 Engineer Signed and Stamped calculations and cross-section of about November 17, 2006; exterior-use asphalt pavement 200 ft. by 200 ft.

First Amended Complaint ¶ 23. Respondents were at a loss, without speculating, to figure out what this paragraph and many others like it are trying to communicate, let alone how they relate to Petitioner's claims. Since Petitioner verified the First Amended Complaint, Respondents were required to admit or deny each and every allegation and verify their response, which is impossible if Respondents cannot understand the allegations.

At no point in any of the three causes of action did Petitioner explain how the paragraphs he incorporates relate to the elements of the cause(s) of action being alleged. Many of the paragraphs had no evident substantive connection or relevance to Petitioner's causes of action. As just a few examples, a number of paragraphs identify various allegedly unsafe or non-compliant conditions at Chevron's facilities (*see, e.g.*, First Amended Complaint ¶¶ 24, 35-43, 45-50, 60-64); and two multi-part paragraphs respectively contain an excerpt from a book about avoiding individual liability in a corporation and an entire reproduction of an email about dangerous conditions (First Amended Complaint ¶¶ 26, 32), without tying these allegations to Petitioner's claims for relief.

Additional sources of uncertainty include that the First Cause of Action cites four different statutes, and the First and Third Causes of Action contain unexplainable references to California Corporations Code §§27101 and 27200, which have no apparent application to this lawsuit. In summary, the First Amended Complaint was so riddled with ambiguous, unintelligible material that Respondents are once again precluded from knowingly responding accurately. As Petitioner changed virtually nothing in his second attempt to draft a complaint, the First Amended Complaint was dismissed with prejudice.

4. Petitioner Failed To State A Cause Of Action For Wrongful Termination Against Any Of Respondents.

To establish a claim for wrongful termination in violation of public policy, Petitioner must prove, among other elements, that he was in an employer-employee relationship and that his employment was terminated in violation of an important public policy. *See Holmes v. General Dynamics Corp.*, 17 Cal.App.4th 1418, 1426 (1993). The public policy must be embodied in a statutory or constitutional provision. *Green v. Ralee Engineering Co.*, 19 Cal.4th 66, 79 (1998). It is the plaintiff's burden to allege the specific statute(s) on which the claim is based. *Id.* at 84.

a. Petitioner Did Not Allege The Facts Predicate For His Claim Against S.W.A.T., Eddy Wu And Steve Tang.

Petitioner's First Cause of Action appears to allege that the statutory basis for his wrongful termination claim against Respondents S.W.A.T., Eddy Wu and Steve Tang is California Labor Code §6310(a)(2).[2] *See* First Amended Complaint ¶ 74. This claim failed because nowhere in the First Amended Complaint did Petitioner allege that he had instituted, or was to testify in, any proceeding, or that he had exercised any rights under §6310, prior to his termination. Without such factual allegations, there was no basis for Petitioner's allegation that his termination somehow violated the public policy expressed in §6310(a)(2).

b. Petitioner's First Cause Of Action May Not Be Brought Against Respondents Eddy Wu And Steve Tang.

Petitioner attempted to hold two of the individual Respondents personally liable for his allegedly wrongful termination from employment with S.W.A.T. in

---

[2] Section 6310(a)(2) provides.

"(a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: . (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her."

violation of public policy. Petitioner alleged that Respondents Eddy Wu and Steve Tang are each managers working for S.W.A.T., but nowhere alleged that they were his employer in their individual capacities. First Amended Complaint ¶¶ 7, 11, 12.

Individual managers of a company are not considered "employers" and therefore may not be held personally liable for the tort of wrongful termination in violation of public policy. *Reno v. Baird*, 18 Cal.4th 640, 663-664 (1998); *see also Khajavi v. Feather River Anesthesia Medical Group*, 84 Cal.App.4th 32, 53 (2000); *Phillips v. Gemini Moving Specialists*, 63 Cal.App.4th 563, 576 (1998); *Jacobs v. Universal Development Corp.*, 53 Cal.App.4th 692, 704 (1997); *Weinbaum v. Goldfarb, Whitman & Cohen*, 46 Cal.App.4th 1310, 1315 (1996) (individuals who are not employers are "legally incapable" of committing the tort of wrongful termination in violation of public policy).

c. Petitioner's First Cause Of Action Failed As Against Chevron, Which Was Not Petitioner's Employer.

Petitioner's First Cause of Action may only be brought against Petitioner's employer. *See Khajavi*, 84 Cal.App.4th at 53 ("As a matter of law, only an employer can be liable for the tort of wrongful discharge in violation of public policy."). The First Amended Complaint conveyed the arrangement that Chevron contracted with S.W.A.T. to perform

engineering services at its Richmond refinery, and that Petitioner was the employee whom S.W.A.T. assigned to perform some of that work, for which Chevron paid S.W.A.T. by the hour (hence, the time sheets Petitioner filled out). Petitioner nowhere alleged in the First Amended Complaint that Chevron was Petitioner's employer, nor did he allege facts from which it could be inferred that Chevron was Petitioner's employer.

To the contrary, Petitioner alleged in the First Amended Complaint that S.W.A.T. (and only S.W.A.T.) interviewed him (First Amended Complaint ¶ 7); hired him (First Amended Complaint ¶ 11); determined his duties and assignments (First Amended Complaint ¶¶ 11-12, 33, 45, 47, 57); commented on his work (First Amended Complaint ¶ 18); held "staff meetings" that Petitioner attended (First Amended Complaint ¶¶ 21-22, 65); reached agreement on and paid his salary, but failed to pay all of it (First Amended Complaint ¶ 71); and fired him (First Amended Complaint ¶ 30). The First Amended Complaint also variously identified Petitioner as "SWAT Francisco Molina Jr." and "SWAT terminated Molina." First Amended Complaint ¶¶ 22, 31. Thus, Petitioner's own allegations pointed to only one possible employer: S.W.A.T.

5. Petitioner May Not Recover Allegedly Underpaid Wages From Marian Tang.

As with most of Petitioner's allegations, it was difficult to discern what theory Petitioner relies on for his Third Cause of Action, brought against only defendant Marian Tang, S.W.A.T.'s Office Manager. *See* First Amended Complaint ¶¶ 9, 80. The claim was entitled "Conversion of Wages," but it included a parenthetical citation to Corporations Code §§27101 and 27200 (*see* First Amended Complaint ¶ 80), which deal with fraud, deceit or conversion by a person in connection with the solicitation, receipt or collection of money from the holder of a security for the purpose of protecting, enforcing or representing the rights of the security owner. None of Petitioner's allegations made any sense of his citation of these sections of the Corporations Code.

Petitioner also incorporated by reference into the Third Cause of Action several paragraphs that have something to do with recording time (beyond that, they are indecipherable) and receiving less than the pro-rated amount of his annual salary for the three months he allegedly worked in 2007. *See* First Amended Complaint ¶ 82, incorporating ¶¶ 67-71. The incorporated paragraphs of the Third Cause of Action did not allege any acts by Marian Tang that stated a claim for conversion by her.

Under most circumstances, individual agents of corporations are not liable for alleged unpaid wages. *See Reynolds v. Bement*, 36 Cal.4th 1075, 1087-1088,

1091 (2005) (none of plaintiff's various statutory and tort causes of action supplanted the common law rule that corporate agents acting within the scope of their agency are not personally liable for the corporate employer's failure to pay wages, whether on a tort or contract theory); *Jones v. Gregory*, 137 Cal.App.4th 798, 805 (2006) (reaching the same result as *Reynolds* with a plaintiff suing under various different statutory causes of action from those at issue in *Reynolds*). Petitioner alleged that each defendant was acting as the agent or employee of the others while committing the acts alleged in the First Amended Complaint. First Amended Complaint ¶ 2.

The possible exceptions to the common law rule recognized by *Reynolds* include established common law theories and statutes that clearly provide for individual liability. *See Reynolds*, 36 Cal.4th at 1089. But Petitioner did not cite any statute that clearly makes individual agents of corporations liable for payment of wages. Further, *Reynolds* made it clear that in order to hold an individual agent liable in tort for unpaid wages, the plaintiff would have to show that the individual personally gained from his or her wrongdoing. *Id.* at 1091 (to hold individual agent liable for conversion of wages, the individual must have misappropriated the wages owed for his or her own individual advantage). Not only did Petitioner not allege that Marian Tang misappropriated his unpaid wages for her own advantage – he did not even allege that either of the corporate Respondents did so. Nor has Petitioner alleged that Marian Tang is the alter

ego of S.W.A.T. or any supporting factual basis for such an assertion.

Petitioner simply made the accusation that Marian Tang is personally liable for damages for conversion. First Amended Complaint ¶¶ 80, 83. The Court is *not* bound by "contentions, deductions or conclusions of fact or law" in the Complaint. *Blank v. Kirwan*, 39 Cal.3d 311, 318 (1985). Petitioner did not state a claim for holding Marian Tang liable for the alleged underpayment of his compensation under any theory.

6. The Second Cause Of Action For Fraud And Deceit Was Inadequately Pled.

To allege a valid cause of action for fraud, a plaintiff must plead the following elements with specificity: (1) a misrepresentation, (2) knowledge of its falsity, (3) intent to defraud, (4) justifiable reliance and (5) resulting damage. *Gil v. Bank of America, N.A.*, 138 Cal.App.4th 1371, 1381 (2006) ("Every element of the cause of action for fraud must be alleged in the proper manner (i.e. factually and specifically), and the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.").

The allegations incorporated into Petitioner's Second Cause of Action for "Fraud and Deceit" failed to state the elements of a fraud claim *and* lacked the requisite specificity to apprise the Respondents and

the Court of the circumstances supporting the fraud claim, such as who made what representation(s) to Petitioner and when; facts showing an intent to deceive and knowledge of falsity or recklessness as to truth at the time of the representation(s); and what harm Petitioner allegedly suffered in relying on the representation(s). *See id.* (upholding sustained demurrer as to fraud cause of action because complaint did not allege every element of the cause of action factually and specifically).

The paragraphs Petitioner's Second Cause of Action incorporated related to the establishment of his employment relationship with S.W.A.T. and allegations about Chevron facilities not meeting certain building codes or standards. There was also one mysterious allegation (First Amended Complaint ¶ 32) incorporated by reference in which Petitioner quoted from a book on how to avoid personal liability as an agent of a corporation. These allegations failed to state even one element of a fraud claim, either in conclusion or specifically, let alone all five elements.

7. Petitioner's Demands For Punitive Damages Were Unsupported.

California Civil Code §3295(e) provides that "[n]o claim for exemplary damages shall state an amount or amounts." The First Amended Complaint asserted that the amount in controversy in this case "exceeds" $8 million, exclusive of interest and costs. *See* First Amended Complaint ¶ 5. The amounts

Petitioner claimed in actual damages total approximately $4.6 million (*see* First Amended Complaint ¶¶ 75[1-3], 79[7], 83[10]), which must mean the remaining $3.4 million was being demanded as punitive damages. As First Amended Complaint Paragraph 5 violated California Civil Code §3295(e), it was improper. *See* Code Civ. Pro. §436(b).

In fact, Petitioner's demands for punitive damages, even in an unspecified amount, was improper. California Civil Code §3294(a) sets forth the circumstances under which a plaintiff might be entitled to punitive damages, as follows:

> "In an action for breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

To recover punitive damages, a plaintiff must allege specific facts indicating evil motive and intent to injure on the part of the defendant, not mere conclusions. *Ebaugh v. Rabkin*, 22 Cal.App.3d 891, 894-895 (1972) (defendant must have "intent to vex, annoy or injure. Mere spite or ill will is not sufficient; and mere negligence, even gross negligence, is not sufficient to justify an award of punitive damages").

Here, the First Amended Complaint failed to state specific facts showing the requisite level of malice and intent to injure on the part of any of the

Respondents. It was difficult to discern from the First Amended Complaint exactly what each defendant did that is allegedly wrongful, let alone perpetrated with an evil motive and intent to injure.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that Petitioner's request for a writ of certiorari be denied in its entirety.

Dated: January 19, 2010

Respectfully submitted,

JEFFREY L. ADAMS
(*Counsel of Record*)
LISA C. CHAGALA

For Respondents Chevron Products Company, a division of Chevron U.S.A., Inc., S.W.A.T. Energy, Inc., Steve Tang, Eddy Wu, and Marian Tang

LITTLER MENDELSON, P.C.
1255 Treat Blvd., Suite 600
Walnut Creek, California 94597
(925) 932-2468

APPENDIX A

JEFFREY L. ADAMS, Bar No. 148393
CODY JAFFE, Bar No. 215301
LITTLER, MENDELSON
A Professional Corporation
Treat Towers
1255 Treat Boulevard
Suite 600
Walnut Creek, CA 94597
Telephone: 925.932.2468
Fax No.: 925.946.9809

Attorneys for Defendants
CHEVRON U.S.A. INC.
SWAT ENERGY, INC.
STEVE TANG
EDWARD WU
MARIAN TANG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

FRANCISCO MOLINA, JR., Plaintiff, v. S.W.A.T. ENERGY, INC., STEVE TANG, Director, EDWARD WU, CEO Director, MARIAN TANG, Office Manager, Director, CHEVRON PRODUCTS COMPANY, a Division of CHEVRON U.S.A., INC., and DOES 1 through 10, inclusive, Defendants.	Case No. CIV MSC07-02846 ASSIGNED FOR ALL PURPOSES TO THE HONORABLE JUDITH CRADDICK, DEPT. 9 ~~[PROPOSED]~~ /s/ [JC] **ORDER SUSTAINING DEMURRER TO PLAINTIFF'S ENTIRE COMPLAINT WITH LEAVE TO AMEND**

(Filed Apr. 30, 2008)

Date: April 15, 2008
Time: 9 a.m.
Dept.: 9
Complaint Filed:
December 27, 2007
Trial Date: TBD

The Demurrers and Motions to Strike of defendants Chevron U.S.A. Inc., Steven Tang, Marian Tang and Eddy Wu (collectively, "Defendants"), and the Motion to Quash Chevron's Demurrer and Motion to Strike of Plaintiff Francisco Molina, Jr., came on for hearing on April 15, 2008, in Department 9 of the above-entitled Court.

The Court having considered the papers filed in support of and in opposition to the parties' motions, and the Court having issued a tentative ruling on April 14, 2008, and the parties having submitted to the Court's tentative ruling, and good cause appearing therefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants' special demurrers are *sustained with leave to amend,* as to the entire complaint and as to each cause of action within the complaint (Cal. Code Civ. Proc., section 430.10, subd. (f). See also, Cal. Code Civ. Proc., section 425.10, subd. (a).) The complaint is "ambiguous," in that it is difficult to tell which of the lengthy introductory allegations apply to each 1 of the named defendants, and to each cause of

action. (Cal. Code Civ. Proc., section 430.10, subd. (f).) The complaint is also ambiguous as to whether plaintiff is attempting to state a fraud cause of action; the complaint includes references to section 1572 of the California Civil Code, but there is no separately captioned fraud cause of action. Finally, the length of the recitation of background facts in the introductory allegations, the confusing wording of those allegations, the references to legal authorities such as Nolo Press publications and attorney general opinions, and the overall method of the complaint's organization, render the complaint "unintelligible" within the meaning of the special demurrer statute. (*Id.*)

2. Defendants' general demurrers are *moot* in light of the above ruling.

3. Plaintiff shall file and serve any amended complaint on or before May 15, 2008. Plaintiff may wish to consider obtaining legal assistance in drafting any amended complaint. Any amended complaint shall comply fully with each of the following requirements:

a. Plaintiff shall state each cause of action against one named defendant separately from the causes of action stated against the other named defendants; plaintiff shall not join multiple named defendants in one cause of action. Plaintiff may include DOE defendants in any cause of action against a named defendant.

b. Plaintiff shall not combine multiple legal theories in a single cause of action. Thus, for

example, a cause of action for fraud should not be combined with a cause of action for conversion.

c. The caption for each cause of action shall comply with rule 2.112 of the California Rules of Court.

d. The introductory allegations preceding the First Cause of Action, currently paragraphs 1 through 71, shall be limited to allegations identifying plaintiff and the defendants, and showing that Contra Costa County is the proper venue for this action. Each cause of action after the introductory allegations should contain only the necessary substantive allegations specifically relevant to that cause of action.

e. All allegations of the complaint shall be stated "in ordinary and concise language." (Cal. Code Civ. Proc., section 425.10, subd. (a).) Plaintiff should allege only the ultimate facts essential to each cause of action, and not a lengthy recitation of background evidentiary facts.

f. All allegations shall be set forth in clearly numbered paragraphs.

g. The demand for relief in each cause of action shall comply with section 425.10 of the Code of Civil Procedure.

h. Plaintiff shall not cite or quote legal authorities within the text of the complaint, except as follows: plaintiff may cite (without quoting) the

statutes relevant to a given cause of action or claim for relief.

4. Defendants' motions to strike are *moot* in light of the Court's ruling on the companion demurrers. For Defendants' future reference, the Court notes that it is not inclined to consider lengthy motions to strike language that is merely irrelevant or conclusory. The Court is inclined to consider motions to strike only insofar as they are directed to improper remedies, language that is genuinely inflammatory, and the like.

5. Plaintiff's motion to quash defendant Chevron's demurrer and motion to strike is *denied.* Defendant Chevron timely served notice of the date, time, and place of the hearing on its demurrer and motion to strike. Also, plaintiff had ample time to prepare substantive opposition papers after he ascertained this information.

6. All requests for sanctions are *denied*.

IT IS SO ORDERED:

Dated: April 25, 2008 /s/ [Illegible] Judith Craddick
THE HONORABLE
JUDITH CRADDICK

APPROVED AS TO FORM: HELD 10 DAYS

Dated: April ___, 2008 _____
FRANCISCO MOLINA, JR.
Plaintiff *in propria persona*

APPENDIX B

JEFFREY L. ADAMS, Bar No. 148393
CODY JAFFE, Bar No. 215301
HARRY DECOURCY, Bar No. 230516
LITTLER MENDELSON
A Professional Corporation
Treat Towers
1255 Treat Boulevard
Suite 600
Walnut Creek, CA 94597
Telephone: 925.932.2468
Fax No.: 925.946.9809

Attorneys for Defendants
CHEVRON U.S.A. INC.
SWAT ENERGY, INC.
STEVE TANG
EDWARD WU
MARIAN TANG

SUPERIOR COURT OF
THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

FRANCISCO MOLINA, JR., Plaintiff, v. S.W.A.T. ENERGY, INC., STEVE TANG, Director, EDWARD WU, CEO Director, MARIAN TANG, Office Manager, Director,	Case No. CIV MSC07-02846 ASSIGNED FOR ALL PURPOSES TO THE HONORABLE JUDITH CRADDICK, DEPT. 9 ~~[PROPOSED]~~ /s/ [Illegible] **ORDER GRANTING DEMURRER AND**

CHEVRON PRODUCTS COMPANY, a Division of CHEVRON U.S.A., INC., and DOES 1 through 10, inclusive, Defendants.	**MOTION TO STRIKE PORTIONS OF FIRST AMENDED COMPLAINT; MOTION TO STRIKE; DEMURRER TO FIRST AMENDED COMPLAINT** (Filed Aug. 14, 2008) Date: July 29, 2008 Time: 9:00 a.m. Dept.: 9 Complaint Filed: December 27, 2007 Trial Date: TBD

The Demurrer and Motion to Strike Portions of First Amended Complaint; Motion to Strike; and Demurrer to First Amended Complaint ("the Demurrer") filed by Defendants CHEVRON U.S.A. INC., SWAT ENERGY, INC., STEVE TANG, EDWARD WU and MARIAN TANG ("Defendants") came on for hearing on July 29, 2008 in Department 9 of the above-entitled Court.

The Court, having considered the papers filed in support of the Demurrer, including Defendants' Notice of Non-Opposition to Demurrer and Motion to Strike Portions of First Amended Complaint, and the Court having issued a tentative ruling on July 28, 2008 and no party having notified the Court of its intention to contest the tentative ruling, and for good cause appearing:

IT IS HEREBY ORDERED AS FOLLOWS:

Defendants' special demurrers are sustained without leave to amend, as to the entire complaint, and as to each cause of action within the complaint. (Cal. Code Civ. Proc., section 430.10, subd. (f).) Despite an opportunity to amend, and despite the detailed explanation in the Court's previous ruling of the pleading defects that plaintiff needed to address, plaintiff's First Amended Complaint is impermissibly "uncertain" in most of the same respects as the original complaint.

Defendants' general demurrers are also sustained without leave to amend, as to the entire complaint, and as to each cause of action within the complaint. (Cal. Code Civ. Proc., section 430.10, subd. (e).) Despite the confusing nature of the First Amended Complaint, the Court has made a reasonable effort to evaluate those allegations specifically referenced under the headings for individual causes of action. Based on this evaluation, the Court finds as follows:

(1) the First Cause of Action does not state facts sufficient to constitute a cause of action for wrongful termination in violation of public policy (FAC, paragraphs 72 through 75);

(2) the Second Cause of Action does not state facts sufficient to constitute a cause of action for fraud (FAC, paragraphs 76 through 79), and;

(3) the Third Cause of action does not state facts sufficient to constitute a cause of action for conversion (FAC, paragraphs 80-83).

This action is hereby dismissed with prejudice. All future hearing dates in this action are hereby vacated.

In light of the ruling above on Defendants' demurrers, Defendants' motions to strike are moot.

IT IS SO ORDERED:

Dated: 8/8/08 /s/ [Illegible] Judy Craddick
THE HONORABLE
JUDY CRADDICK

APPROVED AS TO FORM:

Dated: _____

FRANCISCO MOLINA, JR.
Plaintiff *in propria persona*

APPENDIX C

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FRANCISCO MOLINA, JR., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CHEVRON U.S.A., INC et al., Real Parties in Interest.	A122609 (Contra Costa County Super. Ct. No. CIV MSC07-02846)

THE COURT:*

The petition for a writ of mandate and/or prohibition is denied.

Dated: SEP 11 2008 /s/ McGuiness, P.J. P.J.

* McGuiness, P.J. & Siggins, J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

FRANCISCO MOLINA, JR., Plaintiff and Appellant, v. S.W.A.T. ENERGY, INC., et al., Defendants and Respondents.	A122508 (Contra Costa County Super. Ct. No. C07 02846) (Filed Jun. 29, 2009)

Plaintiff Francisco Molina, Jr., appearing in propria persona on appeal as he did in the trial court, appeals from a judgment dismissing his first amended complaint following the entry of an order sustaining without leave to amend a special demurrer by defendants S.W.A.T. Energy, Inc., Chevron Products Company and individuals Edward Wu, Steve Tang and Marian Tang. He contends that the

court erred in sustaining the demurrer on the ground of uncertainty under Code of Civil Procedure section 430.10, subdivision (f).[1] We affirm.

Background

On December 27, 2007, plaintiff filed a complaint against defendants for damages arising out of his alleged wrongful termination. On April 30, 2008, the court sustained defendants' demurrer to the complaint with leave to amend. The order explains, "The complaint is 'ambiguous,' in that it is difficult to tell which of the lengthy introductory allegations apply to each of the named defendants, and to each cause of action. [Citation.] The complaint is also ambiguous as to whether plaintiff is attempting to state a fraud cause of action; the complaint includes references to section 1572 of the California Civil Code, but there is no separately captioned fraud cause of action. Finally, the length of the recitation of background facts in the introductory allegations, the confusing wording of those allegations, the references to legal authorities such as Nolo Press publications and attorney general opinions, and the overall method of the complaint's organization, render the complaint 'unintelligible' within the meaning of the special demurrer statute." The order advised plaintiff that he "may wish to consider obtaining legal assistance in drafting any amended complaint" and

---

[1] All statutory references are to the Code of Civil Procedure.

instructs that "[a]ny amended complaint shall comply fully with each of the following requirements: [¶] a. Plaintiff shall state each cause of action against one named defendant separately from the causes of action stated against the other named defendants; plaintiff shall not join multiple named defendants in one cause of action. . . . [¶] b. Plaintiff shall not combine multiple legal theories in a single cause of action. Thus, for example, a cause of action for fraud should not be combined with a cause of action for conversion. [¶] c. The caption for each cause of action shall comply with rule 2.112 of the California Rules of Court. [¶] d. The introductory allegations preceding the First Cause of Action, currently paragraphs 1 through 71, shall be limited to allegations identifying plaintiff and the defendants, and showing that Contra Costa County is the proper venue for this action. Each cause of action after the introductory allegations should contain only the necessary substantive allegations specifically, relevant to that cause of action. [¶] e. All allegations of the complaint shall be stated 'in ordinary and concise language.' [Citation.] Plaintiff should allege only the ultimate facts essential to each cause of action, and not lengthy recitation of background evidentiary facts. [¶] f. All allegations should be set forth in clearly numbered paragraphs. [¶] g. The demand for relief in each cause of action shall comply with section 425.10 of the Code of Civil Procedure. [¶] h. Plaintiff shall not cite or quote legal authorities within the text of the complaint, excepts [sic] as follows: plaintiff may

cite (without quoting) the statute relevant to a given cause of action or claim for relief."

On May 13, 2008, plaintiff filed his first amended complaint, which alleges causes of action for wrongful termination in violation of public policy, fraud and conversion. On June 12, 2008, defendants filed a demurrer and motion to strike the first amended complaint. Defendants argued again that the amended complaint was uncertain within the meaning of section 430.10, subdivision (f) and that the amended complaint failed to comply with the requirements previously set forth by the trial court. Plaintiff did not file an opposition to the demurrer nor did he contest the court's tentative ruling sustaining the demurrer. On July 29, 2008, the court adopted its tentative ruling and sustained without leave to amend defendants' demurrer under section 430.10, subdivision (f). The court explained, "Despite the opportunity to amend, and despite the detailed explanation in the court's previous ruling of the pleading defects that plaintiff needed to address, plaintiff's first amended complaint is impermissibly 'uncertain' in most of the same respects as the original complaint."[2] Judgment was entered in favor

---

[2] The court also sustained the demurrer under section 430.10, subdivision (e), stating, "Despite the confusing nature of the first amended complaint, the court has made a reasonable effort to evaluate those allegations specifically referenced under the headings for individual causes of action." Based on this evaluation, the court found that the amended complaint did not state facts sufficient to state a cause of action for wrongful

(Continued on following page)

of defendants on September 24, 2008. This appeal followed.

Discussion

Section 430.10, subdivision (f) authorizes a party against whom a complaint has been filed to object by special demurrer to the pleading on the ground that "[t]he pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." A demurrer for uncertainty may be sustained when the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 7:85.)

On appeal from a judgment dismissing a complaint after a demurrer is sustained without leave to amend, we review de novo the trial court's decision to sustain the demurrer, and we review under the abuse of discretion standard the decision to deny the plaintiff leave to amend. (*Lazar v. Hertz Corp.* (1999)

---

termination in violation of public policy, fraud or conversion. Because we conclude that the demurrer was properly sustained without leave to amend on the ground of uncertainty, we do not consider this alternative ground.

69 Cal.App.4th 1494, 1501.) In determining whether the court properly sustained the demurrer without leave to amend, this court decides whether there is a reasonable possibility an amendment could cure the pleading defect. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) The plaintiff bears the burden of proving there is a reasonable possibility an amendment would cure the defect. (*Ibid.*)

We agree with the trial court's determination that the first amended complaint is uncertain within the meaning of section 430.10, subdivision (f). As the court observed, the lengthy recitation of background evidentiary facts is rambling, confusing, drafted in incomplete sentences and thoughts and generally disorganized. Contained within the litany of unrelated facts are random and unexplained citations and quotations from various legal authorities. More importantly, it is difficult to determine with reasonable reliability what allegations are made against each defendant and what facts form the alleged basis of what cause of action. As defendants note, "Since [plaintiff] verified the [first amended complaint], [defendants] would be required to admit or deny each and every allegation and verify their response which is impossible if [they] cannot understand the allegations." While plaintiff is correct that a demurrer based on uncertainty should be strictly construed (*Khoury v. Maly's of California, Inc., supra*, 14 Cal.App.4th at p. 616), the uncertainty in this case is not, as plaintiff suggests, directed at inconsequential matters and the ambiguity does not

involve facts "*presumptively within the [defendants] knowledge.*" Rather, the level of uncertainty is sufficient to reasonably prevent defendants from filing a responsive pleading.

Plaintiff's briefs on appeal are similarly unintelligible and fail to comply with rule 8.204 of the California Rules of Court. Plaintiff fails to "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." (Cal. Rules of Court, rule 8.204(a).) For example, plaintiff's opening brief states without elaboration: "Plaintiff asserts that he was denied a 'DAY IN COURT on the MERITS' for which [he] duly requests a REVERSAL and a REMAND 'FAIR TRIAL' as to the July 10, 2008 discovered FRAUD UPON THE COURT and subsequently documented in several motions between July 10, 2008 and July 29, 2008. . . ." The next sentence reads, "The order of dismissal of August 14, 2008, page 2 line 23, 24 'All future hearing dates in this action are hereby vacated.' is very disturbing because admissions deemed entered on Chevron U.S.A. Inc., SWAT Energy Inc and Steve Tang issues in light of the FRAUD UPON THE COURT have been forestalled, first by the court dates set by the court clerks, clerks, and now the trial judge." Plaintiff provides no additional explanation demonstrating what relevance any of these orders have to the ruling on the demurrer.

Plaintiff asserts in his "summary conclusion," also without explanation, that "[t]he trial court abused its discretion in sustaining a demurrer without leave to amend even though no request to amend such a pleading was made." We disagree. When the trial court sustained the demurrer to plaintiff's original complaint, it provided him with clear instructions for the amended complaint. Despite the court's assistance, plaintiff's amended complaint remains equally unintelligible. Plaintiff did not oppose the demurrer in the trial court. He did not appear at the hearing to request leave to amend or to offer an explanation for his failure to comply with the court's prior ruling. Moreover, plaintiff has not suggested how his complaint might be amended to cure the defects identified by the court. The trial court could reasonably conclude that even if it gave plaintiff an additional opportunity to amend there is no reasonable possibility that he would file an intelligible complaint. (See *Taliaferro v. Prettner* (1955) 135 Cal.App.2d 157, 160 ["The courts are, and should be, liberal in allowing pleadings to be amended, but when, as here, the court reasonably concludes that the plaintiff has made no real effort to comply with the permission once given him to amend his complaint, the amended complaint becomes nothing but a sham. The court is not required to give him another opportunity"]; *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 444 [failure to provide a proposed amendment or advanced on appeal any allegation that might cure the defects in amended complaint supports the trial court's order

denying leave to amend].) Accordingly, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend.

Disposition

The judgment is affirmed. Defendants shall recover their costs on appeal.

Pollak, J.

We concur:

McGuiness, P.J.

Siggins, J.